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ATTORNEY GENERAL



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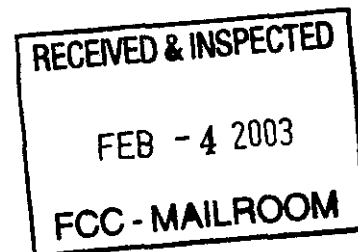
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Office of The Attorney General
State of Connecticut

January 31, 2003



Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights MD 20743

RE: Review of the Commission's Broadcast Ownership Rules
MB Docket No. 02-277
MM Docket No. 01-235
MM Docket No. 01-317
MM Docket No. 00-244

Dear Secretary:

Transmittal herewith is an original and four copies of the Comments and Reply Comments of the Attorney General of the State of Connecticut in the above-referenced review and rulemaking docket proceedings.

Should any questions arise respecting this matter, please communicate with Rachel O. Davis, Assistant Attorney General, or with the undersigned.

Very truly yours,

Richard Blumenthal
RICHARD BLUMENTHAL *by ROJ*

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Before the
Federal Communications Commission
Washington, D.C. 20554

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MB Docket No. 02-277

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**COMMENTS AND REPLY COMMENTS OF THE
ATTORNEY GENERAL, STATE OF CONNECTICUT**

Richard Blumenthal, Attorney General of the State of Connecticut, (“Attorney General”) herewith submits Comments and Reply Comments in response to the Notice of Proposed Rulemaking, Release FCC 02-249 (released September 23, 2002) (“NPRM”). The NPRM encompasses the four docketed proceedings referenced in the caption. The Attorney General’s comments will principally address the fact that multiple ownership restrictions are necessary in the public interest, as required by Section 202(h) of the Telecommunications Act of 1996, MB Docket No. 02-277, and that limitations on cross-ownership of broadcast stations and newspapers should be retained, MM Docket No. 01-235.

I. Introduction

1. The Attorney General of the State of Connecticut is **an** elected official and a constitutional officer. Conn. Const. Amend. I(1970). The Attorney General has the statutory authority to represent the citizens of the State of Connecticut to fulfill his public duty, **as** Attorney General, to protect the interests of the people of the State of Connecticut. Commission on Special Revenue v. Freedom of Information Commission, 174 Conn. 308, 318-19, 387 A.2d 533 (1978).

2. The Attorney General is entrusted with enforcement of the Connecticut Antitrust Act, COM. Gen. Stat. §§ 35-24, et seq. The Connecticut Antitrust Act, patterned generally after the federal antitrust laws, states, inter alia, that sales “shall be unlawful where the effect ... may be to substantially lessen competition or tend to create a monopoly in any part of trade or commerce and where such goods or services *are* for the use, consumption or resale in this state.” Conn. Gen. Stat. § 35-29. The Attorney General submits that antitrust concerns *are* important components of the “public interest” inquiry now before the Commission.

3. Waiver of the Commission’s deadline for the receipt of initial comments is hereby requested. The Commission has ordered that a public hearing in these matters be held in Richmond, Virginia on February 27, 2003. The Attorney General submits that the Commission’s processes will not be prejudiced by the receipt of these Comments. Sound administrative practice counsels that the waiver be granted. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

II. Diversification of Ownership

4. The Federal Communications Commission (“Commission”) has a congressional mandate to grant and renew broadcast station licenses, including transfers of licenses, in the public interest. NPRM, ¶ 2, citing 47 U.S.C. §§ 307, 308, 309(a), and 310(d); WNCN Listeners Guild v. FCC, 610 F.2d **838**, 843 n. 10 (D.C. Cir. 1979).

5. Historically the Commission has acted in the public interest through *the* policies of diversity, competition and localism. Under the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 5 P&F Rad.Reg.2d 1901 (1965), diversification of ownership was recognized as the primary criterion in the allocation of broadcast facilities. See e.g., Joseph Bahr, 92 FCC 2d 114, 52 P&F Rad. Reg. 2d 996 (Rev. Bd. 1982). Numerous new broadcast station construction permits and licenses were awarded by the Commission based on this criteria. Localism was also valued, as integration of ownership with management – operation of the station by local owners, already familiar with the needs and issues of the community – was recognized for qualitative merit. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 556-57 (1990).

6. The Commission’s rules, however, only required these owners of new stations to own and operate the stations for a limited term of years. After that time, they were allowed to sell the properties, according to law. Despite such sales, the Commission’s multiple ownership rules maintained a great degree of diversity in ownership of stations and use of the broadcast spectrum. This diversity continued even as the Commission relaxed the original limits on station ownership that it had imposed.

7. For example, the television multiple station ownership rule, as originally promulgated in the early 1940’s, prohibited common ownership of more than three television stations. See Fox Television Stations, Inc. v. FCC, 280 F.3d 1027, 1034 rehearing granted, 293 F.3d 537

(D.C. Cir. 2002). Television in the 1940's was limited to VHF. As technology advanced, the Commission revisited the television ownership rule and relaxed it, to seven, and then to the station limit of twelve. See Fox Television Stations, at 1035. The Telecommunications Act of 1996 ("the 1996 Act") broadened ownership yet more. Id. However, the principle of diversity and the First Amendment protections that principle provided to the public, were never abandoned.

8. The U.S. Supreme Court has steadfastly upheld the Commission's diversification of ownership policies, See Turner Broadcasting System, Inc., et al. v. FCC, 512 U.S. 622, 663 (1994); Metro Broadcasting, Inc. v. FCC, 497 U.S. at 566-67. The importance of multiple voices "can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population." U.S. v. Southwestern Cable Co., 392 U.S. 157, 177 (1968). In Turner Broadcasting, the U.S. Supreme Court, relying on a half century of cases specifically upholding and protecting the public's paramount interest in a diversity of information sources, stated:

[A]ssuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment. Indeed, it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.

Id., (citations omitted).

10. The Commission's diversity of ownership rules and policies are based on the rationale that the broadcast spectrum is part of the public domain and is limited and scarce. Not everyone may appropriate and use a limited public resource or own a broadcast station. Technological developments have not advanced so far that the Commission, and the judicial branch, may lightly abandon this principle. Diversity of ownership brings about diversity of

voice and viewpoint and remains necessary to the public's interest in free speech, protected by the First Amendment, and embodied in the Commission's congressional mandates. See Sinclair Broadcast Group, at 161-162 (discussion of spectrum scarcity rationale underpinning ownership regulation, including commission's judgment that "it is unrealistic to expect true diversity from a commonly owned station – newspaper combination," citing FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 796-97 (1978).)

11. The Commission is also cognizant of the fact that whether the public receives their programming off the air-waves or via a cable, licensed broadcast stations continue to be a critical component of the information sources that *are* available to the viewing public. Sinclair Broadcast Group, 284 F.3d 148, 161 (D.C. Cir. 2002).

12. The Commission now specifically seeks comment on the statutory language of Section 202(h) of the 1996 Telecommunications Act, and the U.S. Court of Appeals interpretations of that language in Fox Television Stations, Inc. v. FCC, and in Sinclair Broadcast Group, Inc. v. FCC, 284 F.3d at 161. Congress has specifically directed the Commission to consider "competition." Section 202(h) provides as follows:

The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

13. The Commission seeks to justify the ownership rules it retains as necessary in the public interest. The Attorney General supports retention of the multiple and cross-ownership rules, as necessary to provide multiple voices in our communities and as a necessary component of the public's First Amendment rights. Without limitations on ownership, "competition" in

broadcasting would be severely compromised. The trend since 1996 has been unprecedented consolidation, stemmed only by the Commission's ownership rules, which have stood as a safeguard to the public's ability to receive a multiplicity of viewpoints and voices by preserving competition within and among the media.

14. The Commission should retain, if not strengthen, the current multiple and cross-ownership rules, in order that many voices may determine editorial policy, and serve the public interest. Repeal of these rules would be a disservice to the nation and could require the Attorneys General of individual states, and other antitrust enforcement officials, to attempt to fill the void which repeal of the rules would create through costly and time consuming processes, including litigation, as further consolidation of the media would substantially lessen competition and impair the public's First Amendment rights. Compliance with Commission rules, moreover, would not bar the Attorney General from enjoining a merger under the Connecticut Antitrust Act, were the facts to support an unlawful lessening of competition.

III. Broadcast/Newspaper Cross-Ownership

15. Connecticut has eighteen daily newspapers of general circulation. Register and Manual of Connecticut at 834 (2002).¹ The majority of these newspapers, and those of the largest circulation, are owned by companies headquartered in other states and by companies with multiple media outlets. See Exhibit A, Daily Newspapers in Connecticut. For example, The Hartford Courant, the state's largest daily, is published in Hartford, the state capital. Daily circulation is 202,914.² The Hartford Courant is owned by Tribune Broadcasting Co., Chicago,

¹ The Yale Daily News is also listed in the Register, but has not been included here. It circulates within the Yale University community, and principally covers news of interest to Yale University. It is not a newspaper of general circulation.

² Gale Directory of Publications and Broadcast Media, at 279 (2003).

Illinois. Broadcasting & Cable Yearbook 2001, at A-84. Tribune Broadcasting Co. also publishes the following daily newspapers: Greenwich Time, Greenwich, CT; The Advocate, Stamford, CT; Sun-Sentinel, Fort Lauderdale, FL; Los Angeles Times; Newsday, the Baltimore Sun, The Morning Call, Allentown, PA; and The Orlando Sentinel. The Tribune Broadcasting Co. owns 22 television stations and other broadcast properties, including WTIC-TV, Channel 61, Hartford, CT. The New Haven Register, the state's second largest daily, is published by the Journal Register Company, based in Trenton, New Jersey. Media News Group, the seventh largest newspaper company in the U.S. and a broadcast owner, publishes the Connecticut Post in Bridgeport, CT. The Meredith Group of Des Moines, Iowa is the parent of WFSB, Hartford's VHF television station. Localism is not being well served by the status quo and any further diminution in local editorial direction would not be likely to serve the public interest.

16. Regardless of the perceived ubiquity of television, there are only 1,719 full power television stations in the country. FCC News Bulletin (Jan. 13, 2003). There are only thirteen licensed to Connecticut communities. Broadcasting & Cable Yearbook (2001) at B-153. Of these, four are public broadcasting stations. **All** of the others are owned by companies headquartered in other states and by companies with multiple media operations. See Exhibit B, Television Stations Licensed to Connecticut Communities. While radio outlets and weekly publications provide additional voices, television and daily papers are more likely to be the primary source of news and entertainment. In addition, many of the radio stations and weekly papers are commonly owned and do not represent independent voices.

17. The Commission has received thousands of comments and reply comments in these proceedings. Over 2,000 can be viewed on the online comment retrieval page of the Commission. One entry, posted September 27, 2002, reads: "467 Letters, 'Numerous' filers."

The vast majority are against repeal or elimination of the multiple and cross-ownership rules, and in favor of diversity. In contrast, comments from established broadcasting owners, such as a representative letter submitted by Belo Corp., Dallas, Texas, on October 24, 2002,³ support the repeal of the diversity rules, claiming their irrelevance to modern life:

[T]he emphasis on viewpoint diversity has no relevance, from a policymaking perspective, to the over-the-air television business as it is now operated. Marketplace incentives dictate that news reporting be fair and balanced and provide the viewer with comprehensive coverage of local matters. A successful, competitive news program will not have a viewpoint, in the sense of “diverse and antagonistic” television local news reporting ... Viewers today do not look to their TV local news for editorial viewpoints.

15. Nothing could be further from the truth. The basic decision whether to air a story is editorial in nature. There has been an “outpouring of public protest” to the apparent proposal that the Commission may discard all ownership limitations. See WNCN Listeners Guild, 610 F.2d at 843 (outpouring of public protest against station format change indicative of public interest in diverse format). The viewpoint espoused by Belo would lead to abandonment of all but market forces, and would lead to fewer owners, fewer voices and a fundamental silencing of the public’s First Amendment right to hear diverse views and speakers, a cornerstone of the values central to our political system and cultural life.

16. The Constitution and the American public demand and deserve diverse, and antagonistic viewpoints, flowing from diverse ownership and a multiplicity of editorial boards and decision makers. The Commission asks for comment on what is “necessary in the public interest.” NPRM, ¶ 18. There is no bright line test, but numerical benchmarks must be chosen.

³ See Belo Corp. letter, http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513297895

It is a qualitative inquiry that relies upon quantitative measures and avoids content-based judgments. It is the position of this office that the current rules constitute what is “necessary in the public interest.” They have served the public interest and no compelling reason or evidence has been advanced which would call for their abandonment.

17. The ownership rules ensure that there are more owners than there would otherwise be. Fox Television Stations, 280 F.3d at 1047 (discussing national television station ownership rule.) The newspaper cross-ownership rule likewise ensures that there are more owners of important media outlets than there would otherwise be. “[O]wnership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation,” Metro Broadcasting, 497 U.S. at 571 n. 16. Since 1964, the Commission has articulated diversity as being necessary in the public interest because:

[t]he greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in political, editorial, or similar programming sense, on public opinion at the regional level.

Sinclair Broadcast Group, 284 F.3d at 160.

18. The Commission is not empowered to license newspapers, obviously. Yet it is of paramount importance that diversity of ownership, as the rational “aspirational proxy” to diversity of viewpoint, be preserved. Fox Television, 280 F.3d at 1047. The Commission should, therefore, continue to recognize that cross-ownership of newspapers and broadcast stations so fundamentally impinges on the public’s right to diversity that it would disserve the public interest to grant a broadcast license which would extinguish a necessary independent voice in a community.

IV. Conclusion

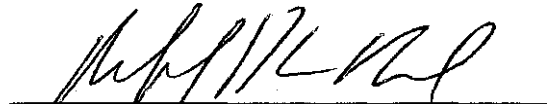
19. Since the passage of the 1996 Telecommunications Act, there has been unprecedented consolidation of broadcast and non-broadcast media ownership nationwide. In one year alone, nine of Connecticut's television stations changed hands. Broadcasting and Cable Yearbook 2001 at A-103. Five of these transactions were to large group media owners. Enough is enough. The Commission must preserve the public's First Amendment right to a true diversity of voices and viewpoints by maintaining its multiple and cross-ownership rules.

WHEREFORE, the premises considered, and good cause shown for acceptance, the Attorney General of Connecticut respectfully submits these Comments and Reply Comments for consideration

Respectfully submitted

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February 3, 2003

#003833435

CERTIFICATE OF SERVICE

I, Marilyn Dobson, hereby certify that a copy of the foregoing Comments and Reply Comments of the Attorney General, State of Connecticut, were mailed to the following, this 31st day of January, 2003:

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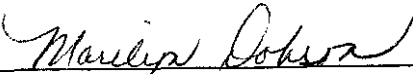
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Marilyn Dobson

EXHIBIT A

DAILY NEWSPAPERS IN CONNECTICUT

<u>Newspaper</u>	<u>Circulation*</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
Connecticut Post Bridgeport, CT www.connpost.com	78,455	Media News Group, Inc. Denver, CO www.medianewsgroup.com Seventh largest newspaper company in the U.S.	47 daily papers in 10 states, including 4 in MA, no others in CT** Combined daily circulation 1.7 million; CBS TV Station affiliate in Anchorage, AK; radio stations in Texas
The Bristol Press Bristol, CT www.BristolPress.com	12,633	Journal Register Company Trenton, NJ www.journalregister.com	23 daily newspapers, including 4 others in CT. Combined daily circulation 560,000; investment in PowerOne Media, hosting largest online newspaper network in the U.S.; 232 non-daily publications
The News-Times Danbury, CT www.newstimes.com	33,743	Ottaway Newspapers, Inc. Subsidiary of Dow, Jones & Co., Inc., and Wall Street Journal Campbell Hall, NY www.ottaway.com	14 daily papers, 17 weekly papers, including <u>The Spectrum</u> , New Milford, CT; combined daily circulation 395,000

* Daily circulation numbers are derived from Gale Directory of Publications and Broadcast Media, Volume 1 (2003).

** Affiliation data and profiles are from www.referenceusa.com and from the websites of the entities.

<u>Newspaper</u>	<u>Circulation'</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
Greenwich Time Greenwich, CT www.greenwichtime.com	12,421	Tribune Company Chicago IL www.tribune.com	12 market leading dailies, including two others in CT. Combined daily circulation 9.3 million, third largest in U.S. 24 television stations, radio and cable interests
The Hartford Courant Hartford, CT www.courant.com	202,914 (largest daily)	Tribune Company	
Journal Inquirer Manchester, CT www.ioumalinquirer.com	44,242	Journal Inquirer www.zwire.com	Independent daily in CT
Record-Journal Meriden, CT www.record-journal.com	26,070	Record-Journal Meriden. CT	Seven other weeklies in CT
The Middletown Press Middletown, CT www.ctcentral.com	(not available)	Journal Register	
Naugatuck News Naugatuck, CT publisher@naugatucknews.com	4,200	Naugatuck News Naugatuck, CT	Independent daily in CT

* Daily circulation numbers are derived from Gale Directory of Publications and Broadcast Media, Volume 1 (2003)

**Affiliation data and profiles are from www.referenceusa.com and from the websites of the entities.

<u>Newspaper</u>	<u>Circulation'</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
The Herald New Britain, CT www.newbritainherald.com	22,756	Journal Register	
The New Haven Register New Haven, CT	183,508 (2 nd largest daily)	Journal Register	
The Day New London, CT www.theday.com	39,768	The Day Publishing Co. New London, CT	Independent daily in CT
The Hour Nonvalk, CT	15,575	Hour Newspapers Nonvalk, CT	
Norwich Bulletin Norwich, CT www.nonvichbulletin.com	28,086	Gannett www.gannett.com	15 daily newspapers; operations in 43 states; publisher of USA Today. Combined daily circulation 7.7 million; 22 TV stations. numerous other media
The Advocate Stamford, CT www.stamfordadvocate.com	55,331	Tribune Company	
The Register Citizen Torrington/Winsted/Northwest Comer www.registercitizen.com	10,581	Journal Register	

* Daily circulation numbers are derived from Gale Directory of Publications and Broadcast Media, Volume I (2003).

**Affiliation data and profiles are from www.referenceusa.com and from the websites of the entities.

<u>Newspaper</u>	<u>Circulation'</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
Waterbury Republican-American Waterbury, CT www.rep-am.com	58,000	Waterbury Republican-American, Waterbury, CT	Independent daily in CT
The Chronicle Willimantic, CT www.thechronicle.com	11,000	Chronicle Printing Co. Willimantic, CT	Two other weekly publications in CT

* Daily circulation numbers are derived from Gale Directory of Publications and Broadcast Media, Volume 1 (2003).

**Affiliation data and profiles are from www.referenceusa.com and from the websites of the entities.

EXHIBIT B

BROADCAST TELEVISION STATIONS IN CONNECTICUT

<u>Station*</u>	<u>Channel</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
WEDW Bridgeport, CT www.cpbi.org	49	CT Public Broadcasting, Inc.	Non-commercial, public broadcasting affiliate
WSAH Bridgeport, CT www.shopathometv.com	43	Shop At Home Network Nashville, TN	Shop At Home programming is broadcast over 400 television stations and cable systems
WEDH Hartford, CT www.cpbi.org	24	CT Public Broadcasting, Inc.	Non-commercial, public broadcasting affiliate
WFSB Hartford, CT www.wfsb.com	3	Meredith Group, Inc. Des Moines, IA	Operates television stations in Phoenix, AZ, Ocala, FL, Orlando, FL, Atlanta, GA, Bay City, MI, Kansas City, MO, Henderson, NV, Greenville, NC, Nashville, TN, and Bend, O R publishes numerous magazines, including <u>Better Homes & Gardens</u> and <u>Ladies Home Journal</u>
WRDM Hartford, CT	13	Telemundo Communications Group, Inc., an affiliate of the National Broadcasting Company New York, NY	NBC affiliate owns and operates 11 Telemundo television stations reaching more than 30% of households

* Station information derived from the Register and Manual at 852-53, Broadcasting & Cable Yearbook 2001, and the websites of the stations and the Connecticut Broadcasters Association site, www.ctba.org.

<u>Station*</u>	<u>Channel</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
WTIC Hartford, CT www.fox61.com	61	Tribune Television Co. Chicago, IL	Tribune Company (see Exhibit A) Notably, publishes <u>The Hartford Courant</u>
WUVN Hartford, CT www.wuvntv.com	18	Entravision Communications Santa Monica, CA www.entravision.com	Entravision operates TV stations in 23 markets. Reaches 2.1 million households
WVIT New Britain, CT www.nbc30.com	30	Outlet Broadcasting, Inc. subsidiary of NBC New York, NY	NBC owns and operates 14 television stations, covering 30% of the nation's households, through programming affiliates
WTNH New Haven, CT www.wtnh.com	8	LIN Television Dallas, TX	LIN operates 23 television stations and has investments 5 other stations
WUVN www.wuvntv.com	18		
WEDY New Haven, CT www.cpbi.org	65	CT Public Broadcasting, Inc.	Non-commercial public broadcasting affiliate
WHPX New London, CT www.paxhartford.tv	26	Paxson Communications Corporation West Palm Beach, FL	Paxson owns and operates 65 stations reaching 86% of households

* Station information derived **from** the Register and Manual at 852-53, Broadcasting & Cable Yearbook 2001, and the websites of the stations and the Connecticut Broadcasters Association site, www.ctba.org.

<u>Station</u>	<u>Channel</u>	<u>Parent Company</u>	<u>Affiliated Papers and Stations</u>
WEDN Norwich, CT	53	CT Public Broadcasting, Inc.	Non-commercial public broadcasting affiliate
WTXX Waterbury, CT	20	Tribune Television, Inc.	Tribune Company (See Exhibit A)

* Station information derived from the Register and Manual at 852-53, Broadcasting & Cable Yearbook 2001, and the websites of the stations and the Connecticut Broadcasters Association site, www.ctba.org.